

SUMMARY OF THE OFFICE ACTION

1. Claims 1, 2, 6, 8-11, 15, 18-21, and 24-28 Have Been Rejected under 35 USC 102(b) As Anticipated by, or in the Alternative, Unobvious over de Keller (U.S. Patent No. 5,975,529)
2. Claims 22 and 23 Have Been Rejected Under 35 USC 103(a) As Unobvious over de Keller.
3. Claims 3-5, 7, 12-14, 16 and 17 Have Been Rejected Under 35 USC 103(a) As Unobvious over de Keller and Further in View of Breeding (specific Breeding Patent ambiguously cited).

RESPONSE TO THE OFFICE ACTION

1. Claims 1, 2, 6, 8-11, 15, 18-21, 24 and 25 Have Been Rejected under 35 USC 102(b) As Anticipated by, or in the Alternative, Unobvious over de Keller (U.S. Patent No. 5,975,529)

Direct Traversal of the Substantive Content of the rejection

RECITATION OF CLAIM 1	TEACHINGS OF deKELLER (5,975,529)
A method of playing a wagering game, comprising:	A method of playing a card game comprising the steps of: requiring each player to place a first wager to participate in a wagering game played against the house/bank; (Claim 1)
placing a first multiple part wager to participate in a first poker-type game;	requiring each player to place a first wager to participate in a wagering game played against the house/bank; ... the winner of the pot bets being the player holding the highest poker hand of five cards;..." (Claim 1)
optionally placing a side bet wager to participate in a second poker-type game played against a pay table;	"In Showdown Poker the object of the game is twofold: a) to make a good poker hand and b) to win the Pot bets. In the case of 'a' the house payout schedule lists a series of poker rankings with corresponding pay-offs..."
dealing a partial hand for the first poker-type game consisting of multiple cards to each player who placed a first wager, <u>the partial hand for the first poker-type game being a complete hand for the second poker-type game;</u>	As noted above, the play of deKeller is "In Showdown Poker the object of the game is twofold: 1) to make a good poker hand using two cards and the three community cards." There is no payable for the partial hand – only the complete hand of 5-cards.
providing community cards to complete partial hands in the first poker-type game; and	"...1) to make a good poker hand using two cards and the three community cards."
resolving each player's multiple part wager according to the rules of the first poker-type game and resolving the second poker-type wager according to a predetermined hierarchy of poker hands in a pay table.	In Showdown Poker the object of the game is twofold: a) to make a good poker hand and b) to win the Pot bets. In the case of 'a' the house payout schedule

	lists a series of poker rankings with corresponding pay-offs and in the case of 'b' the player with the highest poker hand showing wins the Pot bets. FIG. 2. The Pot bet is a bet solely between the players. It is not a wager played against the house.
--	--

As can be seen in the fourth comparison box in the table above, deKeller uses five card hands both for a payable event and the Pot play event. This is in contrast to the fact that claim 1 recites that “, the partial hand for the first poker-type game being a complete hand for the second poker-type game;”

CLAIM 26 WILL BE DISCUSSED OUT OF ORDER FROM INDEPENDENT
CLAIM 18 BECAUSE OF THE NEAR IDENTITY OF ISSUES WITH THE
ARGUMENTS OF CLAIM 1

CLAIM 26	deKELLER
26. (PREVIOUSLY PRESENTED) A method of playing a wagering game against only pay tables, comprising:	A method of playing a card game comprising the steps of: requiring each player to place a first wager to participate in a wagering game played against the house/bank; (Claim 1)
placing an initial multiple part wager to participate in a first poker-type game against only a pay table;	requiring each player to place a first wager to participate in a wagering game played against the house/bank;... the winner of the pot bets being the player holding the highest poker hand of five cards;...” (Claim 1)
optionally placing a side bet wager to participate in a second poker-type game played against a pay table;	“In Showdown Poker the object of the game is twofold: a) to make a good poker hand and b) to win the Pot bets. In the case of 'a' the house payout schedule lists a series of poker rankings with corresponding pay-offs...”
dealing a partial hand for the first poker-type game consisting of multiple cards to each player who placed the initial multiple part wager, <u>the partial hand for the first poker-type game being a complete hand for the second poker-type game;</u>	As noted above, the play of deKeller is “In Showdown Poker the object of the game is twofold: 1) to make a good poker hand using two cards and the three community cards.” There is no payable for the partial hand – only the complete hand of 5-cards.

providing community cards to complete partial hands in the first poker-type game; and	“...1) to make a good poker hand using two cards and the three community cards.”
resolving each player's initial multiple part wager according to the rules of the first poker-type game and resolving the second poker-type wager according to a predetermined hierarchy of poker hands in a pay table.	<p>In Showdown Poker the object of the game is twofold:</p> <p>a) to make a good poker hand and b) to win the Pot bets.</p> <p>In the case of 'a' the house payout schedule lists a series of poker rankings with corresponding pay-offs and in the case of 'b' the player with the highest poker hand showing wins the Pot bets. FIG. 2. The Pot bet is a bet solely between the players. It is not a wager played against the house.</p>

As can be seen, claim 26 clearly recites the fact that the second wager is based upon only the partyial hand cards and a ranking of the partial hand cards **ONLY**. This feature is clearly not shown by deKeller and therefore is not anticipated or obvious from the teachings of deKeller..

Additional and Separate Arguments on the Merits with Respect to Claims

New Claim 26 reads (with **highlighted** changes from claim 1 emphasized):

26. A method of playing a wagering game **against only pay tables**, comprising:

placing a first multiple part wager to participate in a first poker-type game **against only a pay table**;

optionally placing a side bet wager to participate in a second poker-type game played against a pay table;

dealing a partial hand for the first poker-type game consisting of multiple cards to each player who placed a first **multiple part** wager, the partial hand for the first poker-type game being a complete hand for the second poker-type game;

providing community cards to complete partial hands in the first poker-type game; and

resolving each player's multiple part wager according to the rules of the first poker-type game and resolving the second poker-type wager according to a predetermined hierarchy of poker hands in a pay table.

Separate and Individual Arguments on the Merits as to Why de Keller Does Not Anticipate Claim 1 and claims dependent therefrom.

It is asserted in the Rejection that de Keller shows, with respect to original claim 1:

- 1) multiple part wagers (All players make bets of equal value in their respective pots, then place Bet 1 (Col. 2, lines 54-64, and Fig. 1, elements 5, 6 and 7);

- 2) An optional side bet bonus wager (Col. 5, lines 8-21);
- 3) At the beginning of each hand, each player is dealt two cards, although this number may vary, one face up and two down. (Col. 2, lines 58-63). Asserting that three cards as partial hands are obvious;
- 4) The three dealer's cards are community cards completing each player's hands (Col. 2, lines 63-66);
- 5) The first multi-part wager is resolved according to the rules of 5-card poker (Col. 4, lines 39-44) with a 5-card poker pay table (Col. 4, lines 53-56);
- 6) The optional side wager is resolved according to 3-card poker (Col. 5, lines 9-21); and
- 7) Each part of the wager is equal (Col. 2, lines 58-60).

Although the essence of some of these teachings in de Keller is correct, the underlying game of de Keller has numerous other requirements that should be emphasized as excluding anticipation and obviousness from de Keller. One important failure of de Keller under 35 USC 102(b) is the fact that de Keller does not place initial multiple part wagers. Applicants had thought that the term "first" was sufficient to emphasize that point, but have amended to claims to indicate by initial that these multiple part wagers are placed prior to the player viewing dealt cards. On this basis alone, every rejection under 35 USC 102(b) is in error, and there has been no showing of this limitation sufficient to teach modification of that limitation under 35 USC 103(a). The rejections are therefore in error.

Note also that claim 26 recites wherein the game has been limited to play against only pay tables. This provides a clear avoidance of de Keller who has competition against a pay table **and** player-versus-player. It also would not be obvious to eliminate the fundamental requirements of de Keller's game in which the multi-part wagers are required only because of the additional elements of the game.

Claim 27 focuses on the fact that the multi-part wagers are part of the same game and are resolved according to a single event in a single game. This strongly differentiates the subject matter of de Keller.

It is asserted that de Keller in view of Breeding teaches the limits of claims including "...withdrawal of a part of the multiple part wager before a first community card is disclosed to the player, with the player remaining in play in the first poker-type game..." This issue may be more complex, for a number of reasons. Having

distinguished de Keller for lacking multi-part wagers on the same game and playing against only pay table, Breeding teachings both of those elements, in addition to bet withdrawal.

RECITATION OF CLAIM 18	DeKELLER
A method of playing a live casino table card game with physical cards comprising:	A method of playing a card game comprising the steps of: requiring each player to place a first wager to participate in a wagering game played against the house/bank; (Claim 1)
placing an initial a multiple part wager to participate in a casino wagering first poker game against a pay table in which a partial hand of at least two cards is first dealt and later completed for each player;	requiring each player to place a first wager to participate in a wagering game played against the house/bank;... the winner of the pot bets being the player holding the highest poker hand of five cards;..." (Claim 1)
<u>placing an optional single part wager to play a second poker-type game against a pay table using all cards in each player's partial hand;</u>	"In Showdown Poker the object of the game is twofold: a) to make a good poker hand and b) to win the Pot bets. In the case of 'a' the house payout schedule lists a series of poker rankings with corresponding pay-offs..."
dealing a partial hand of cards to each player;	This step in deKeller is performed before the second game and does not require using all cards in the partial hand.
providing additional cards to complete each player's hand; and	"...1) to make a good poker hand using two cards and the three community cards."
resolving each player's wagers in the first poker game and the second poker-type game against two different pay tables.	In Showdown Poker the object of the game is twofold: a) to make a good poker hand and b) to win the Pot bets. In the case of 'a' the house payout schedule lists a series of poker rankings with corresponding pay-offs and in the case of 'b' the player with the highest poker hand showing wins the Pot bets. FIG. 2. The Pot bet is a bet solely between the players. It is not a wager played against the house.

deKeller does not teach or suggest the **highlighted** limitation in claim 18.

deKeller has wagers for complete (e.g., best 5 of seven cards) and does not teach the

limitation of “placing an optional single part wager to play a second poker-type game against a pay table using all cards in each player’s partial hand;” As such, the rejection is in error and must be withdrawn.

Argument against the Examiner’s Position That the Present Claims Lack Priority under 35 USC 120 for the Claimed Subject Matter.

The sole basis for asserting that the claimed subject matter lacks priority under 35 USC 120 is that an intermediate application 08/504,023 lacks compliance with 35 USC 112, second and first paragraphs with respect to the use of “community cards” because:

- 1) the application teaches a single Wild Card that is used by all players; and
- 2) Wild Cards are not community cards because they are different values to each player.

The analysis of this issue of the effect of the Wild Card is in error. Community cards are card(s) common to every player at the table. The type, nature and use of that card are not fundamental to whether or not it is a community card or other cards are discarded or not.

To show that this is common knowledge to one skilled in the art, Applicant cites the following knowledge in the public domain:

- 1) *Ainslie’s Complete Hoyle*, Ton Ainslie, Fireside Book, Simon & Schuster, New York, 1975, pp. 268-269; and
- 2) www.Pogo.com, online wagering at Club Pogo, Texas Hold’Em, Jokers Wild.

The first reference (Ainslie) is self explanatory. It shows that in at least one commonly known poker game, Wild Widow. In the play of Wild Widow, a single center card (as in Let It Ride taught in the 08/504,023 application) is a wild card for every player, to be used in combination, as the individual players desire, with the other cards dealt to the players. Ainslie therefore shows that a single center wild card is a community card.

The Club Pogo site, which has been in place for at least 5 years, provides an online game room in which Texas Hold'Em poker and its variants are played. As is well known, Texas Hold'Em is played with each player receiving two Hold Cards (pocket cards) and in staged events, five community cards. In a variant of Texas Hold'Em provided on Club Pogo's site is a game called Jokers Wild. In that game, the standard 52-card deck is replaced with a 54-card deck having exactly two Jokers. Each Joker is wild. When one or more Jokers appears in the flop, 4th street or the River Card, each player uses each Joker in a manner to make the player's hand the highest possible rank. The Flop, 4th street and the River Card constitute the totality of community cards used in the game. Again, this establishes that the use of a Wild card in a community card set may be used by each player in any way that individual player wants to make the player's hand the best possible rank, independent of the suit or rank that Wild card is used by any other player. The use of the Wild card in the community card set consisting of the Flop, 4th street and the River Card clearly establishes that the Wild card is still a community card.

It is clear that the assertion that the teaching of a wild card in U.S. Patent Application No. 08/504,023 does not cause a failure in the stream of priority as asserted by the Final Office Action. To that end, as clearly indicated below, the claim for priority has been shown to meet the requirements of 35 USC 112, first and second paragraphs with regard to the single ground of objection proposed in the Final Office Action. With the following described priority chain being satisfactory, deKeller is not available as a reference, even if it provided an effective teaching against the claims, which it does not, as clearly shown above.

It still is believed that the de Keller reference is not available under 35 USC 102(b) as a reference in view of the priority date chain established for the present

application. In this regard, the Examiner is requested to review the Table below showing priority for the concepts in the limitations in the claims from the earliest application in the priority chain, which application antedates the filing date of the de Keller reference.

RECITATION OF CLAIM 1	PRIORITY LANGUAGE IN
A method of playing a wagering game, comprising:	“Card-type games provide at least one player with the option of wagering against either a predetermined payout schedule, a dealer's hand, or both.” (Abstract)
placing a first multiple part wager to participate in a first poker-type game;	“(a) determining whether to place a first bet that the player's hand will be greater than a first predetermined rank, where a plurality of hands are ranked according to predetermined rules and the first bet is a fixed payout bet;” (Claim 1) “A method of playing a card game according to claim 23 wherein said card deck is a conventional card deck comprising at least fifty-two cards, and each hand comprises four cards and each player combines said wild card indicia with four indicia of playing cards to form a five card poker hand.” (Claim 24)
optionally placing a side bet wager to participate in a second poker-type game played against a pay table;	“(a) determining whether to place a first bet that the player's hand will be greater than a first predetermined rank, where a plurality of hands are ranked according to predetermined rules and the first bet is a fixed payout bet;” (Claim 1) and “(b) determining whether to place a second bet that the player's hand will beat the dealer;” (Claim 1)
dealing a partial hand for the first poker-type game consisting of multiple cards to each player who placed a first wager, the partial hand for the first poker-type game being a complete hand for the second poker-type game;	“The card of FIGS. 4-6 has a dual function; in playing the game it is used as a wild card; subsequently the card can be taken away by the player and retained as a momento and also serves as a promotional item. In a three-card version of the game described above, a player may be provided with two standard cards and a wild card to form a three-card hand. Alternatively, at least one player may be provided with three cards and be permitted to discard one card in order to form his/her best three-card hand using the wild card. Similarly, in four

	<p>and five-card versions of the game a wild card of the kind shown in FIGS. 4-6 may be issued to each player and to the dealer. The players and dealer then use the wild card repeatedly in conjunction with each four card hand dealt to them to make a five-card poker hand. In a five-card game each player and the dealer may substitute the wild card for any card in their hand to improve the five-card hand they hold. This has the result of creating higher hand values and adding excitement to the game. According to each of these embodiments, the dealer is also preferably provided with the same number of standard cards and a wild card as provided to each player.” The additional card indicates that the original hand is only a partial hand.</p>
<p>providing community cards to complete partial hands in the first poker-type game; and</p>	<p>“According to each of these embodiments, the dealer is also preferably provided with the same number of standard cards and a wild card as provided to each player.” The single wild card to all players is a community card.</p>
<p>resolving each player's multiple part wager according to the rules of the first poker-type game and resolving the second poker-type wager according to a predetermined hierarchy of poker hands in a pay table.</p>	<p>“if the dealer's hand does not exceed the second predetermined rank, the bank paying each player an amount based on the second bet and returning the third bet to the player, or if the dealer's hand exceeds the second predetermined rank, comparing the dealer's hand in turn with that of each other player who placed the second bet and if the player's hand is higher, the banker paying the player an amount based on both the second and third bets, and if the player's hand is lower, the player forfeiting both the second and third bets to the banker; and (g) the banker paying the fixed payout bet in accordance with a predetermined scale to any player who placed the first bet and whose hand exceeds the first predetermined rank.” (Claim 1)</p>

As can be seen, the concept of Claim 1 of the present application finds antecedent basis in parent application 08/504,023 and issued patent U.S. Patent No. 5,685,774 issued November 11, 1997, **but filed on July 19, 1995.** That filing date provides a date prior in time to the available reference date of the de Keller reference, which is that patent's filing

date of September 11, 1995. The de Keller reference is therefore not available as a reference under 35 USC 102(b) as it is not prior to the established priority date of the present application and claims.

Note that the original specification of this Application as filed stated and claimed priority as:

“This application is a continuation-in-part of U.S. Patent Application Serial No. 10/016,436, filed April 29, 2002, titled Player Banked Three Card Poker and Associated Games, which in turn is a continuation-in-part of U.S. Patent Application Serial No. 09/249,118 filed February 2, 1999 which in turn is a continuation-in-part of U.S. Patent Application Serial No. 09/170,092 filed October 13, 1998, now U.S. Patent No. 6,237,916 issued May 29, 2001, which is a continuation-in-part of U.S. Patent Application Serial No. 08/889,919 filed July 10, 1997 now U.S. Patent No. 6,056,641 issued May 2, 2000, which is a division of U.S. Patent Application Serial No. 08/504,023 filed July 19, 1995, now U.S. Patent No. 5,685,774 issued November 11, 1997.”

This priority date is established and is effective in overcoming the de Keller reference.

2. Claims 22 and 23 Have Been Rejected Under 35 USC 103(a) As Unobvious over de Keller.

As the de Keller reference has been shown to be unavailable as a matter of law as a “prior art” reference under 35 USC 102(b), this rejection must fail for at least the same reasons described directly above.

3. Claims 3-5, 7, 12-14, 16 and 17 Have Been Rejected Under 35 USC 103(a) As Unobvious over de Keller and Further in View of Breeding (specific Breeding Patent ambiguously cited).

As the de Keller reference has been shown to be unavailable as a matter of law as a “prior art” reference under 35 USC 102(b), this rejection must fail for at least the same reasons described directly above.

CONCLUSION

All rejections have been shown to be in error. As such, the application and claims are in condition for allowance.

Respectfully submitted,
MARK L. YOSELOFF, et al.
By Their Representatives,
MARK A. LITMAN & ASSOCIATES, P.A.
York Business Center, Suite 205
3209 West 76th Street
Edina, Minnesota 55435
(952) 832-9090

Date: 17 OCTOBER 2005

By: Mark A. Litman
Mark A. Litman
Reg. No. 26,390

CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this Transmittal Letter and the paper, as described herein, are being deposited in the United States Postal Service, as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop: AMENDMENT, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on 17 OCTOBER 2005

Mark A. Litman
Name

Mark A. Litman
Signature

OTHER BOOKS BY TOM AINSLIE

THE COMPLETE HORSEPLAYER
AINSLIE'S COMPLETE GUIDE TO THOROUGHBRED RACING
HANDICAPPERS HANDBOOK
AINSLIE'S COMPLETE GUIDE TO HARNES RACING
AINSLIE ON JOCKEYS

AINSLEY'S COMPLETE HOYLE

BY

TOM AINSLIE

ILLUSTRATIONS BY JILL SCHWARTZ

A FIRESIDE BOOK

Published by Simon & Schuster

New York London Toronto Sydney Tokyo Singapore

Copyright © 1975 by Tom Ainslie
All rights reserved
including the right of reproduction
in whole or in part in any form
A Fireside Book
Published by Simon & Schuster, Inc.

Rockefeller Center
1230 Avenue of the Americas
New York, New York 10020
FIRESIDE and colophon are registered trademarks
of Simon & Schuster, Inc.

Designed by Irving Perkins
Manufactured in the United States of America

3 4 5 6 7 8 9 10 11 12
17 Pbk.

Library of Congress Cataloging in Publication Data

Ainslie, Tom.
Ainslie's complete Hoyle.

1 Cards 2 Games 3 Indoor games 1 Title
GV1243 A34 795 74-32023
ISBN 0-671-21967-7
ISBN 0-671-24779-4 Pbk

4 CENTER-CARD POKER

the showdown. Each player's hand includes the four cards he holds plus the wild card exposed on the table. A popular variation eliminates the draw but features betting after the deal of each round of down cards. And some groups follow this with a draw.

HOLD 'EM

Known in the West by this name or Hold Me, Hole Me, High Hold 'Em or Hold Me Darling, this one challenges the best efforts of the foremost Poker operatives in the land. Betting begins after two down cards are dealt. Then come three up cards on the table and another round of bets. Two more rounds follow exposure of a fourth and then a fifth card at the center of the table. For the showdown, each survivor must use both his closed cards with any three from the center. Wild cards are rarely used in this game and are not necessary. Strategy and tactics are held to be almost occult, but from betting important money in *hope* of improving a bad holding. If the two closed cards are ill matched and of low rank, it pays to drop. If they are somewhat more prepossessing but produce nothing in combination with the first three exposed cards, it is suicidal to stay. In the variation called Omaha, center cards are exposed one at a time, with betting after each is turned up.

WILD WINDOW

In recent years Poker fashion has embraced a group of games that feature small closed hands, a draw and one or more cards exposed at center table and shared by all. After years of cutthroat Stud, the Poker now favored among players of high-stakes "championship" freeze-out is Hold 'Em, a game of enormous subtlety. In Hold 'Em and other members of this family, cards displayed on the table must be counted as part of each contending hand at the showdown. This complicates the percentages of ordinary Draw or Stud. The individual must now reckon with the fact that everyone else has been drawing in hope of matching the same exposed card or cards. The daddy of this good trend is Spit in the Ocean, long popular in its own right.

SPIT IN THE OCEAN

After ante, each player gets four cards down. A single card then goes face up on the table. It is wild, along with the others of its denomination. After a round of bets (often with a minimum opening requirement as in Jackpots), a draw is held. Each player is allowed to draw up to three cards. After another spell of betting comes

Like Spit in the Ocean, except that the center card only establishes the denomination of the wild cards. After center card is exposed, players get a fifth closed card and play proceeds as in Draw. The chief difference, of course, is that a round of betting follows exposure of the wild widow, and another one occurs before the draw.

CRISSCROSS

Several dozen games feature a tableau of down cards at center table. The most familiar looks like this: